IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

RCRev..No. 280 of 2007& CAVEAT OP 627/2007

RCA.8/2006 of II ADDL.DISTRICT COURT,ERNAKULAM
RCP.160/2004 of III ADDL.MUNSIFF'S COURT & RENT CONTROL COURT, ERNAKULAM.

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REVISION PETITIONER/APPELLANT/RESPONDENT

THEKKEKARA MATHEW JACOB,
S/O.MATHEW, "PLYMICA", XL/5389,
GROUND FLOOR, ELIAS CHAMBERS,
MARKET ROAD, KOCHI - 31.

BY ADV. SRI.N.P.SAMUEL

RESPONDENT: RESPONDENT/PETITIONER

DR.SUSY ELIAS, D/O.LATE SARA ELIAS,
40/564, MARKET CANAL ROAD, ERNAKULAM,
KOCHI - 35, NOW RESIDING AT 36/1577-A,
JUDGES AVENUE, ERNAKULAM, KOCHI - 18.

BY ADV. SRI S. SHYAM (FOR CAVEATOR)

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 23/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. BALAKRISHNAN NAIR & HARUN-UL-RASHID, JJ.

R.C.Rev.No.280 of 2007

Dated, this the 23rd. day of August, 2007

ORDER

Balakrishnan Nair, J.

The tenant is the revision petitioner. The respondent is the landlord.

2. The landlord moved for evicting the tenant under sec.11(3) and 11(8) of the Kerala Buildings (Lease and Rent Control) Act. The Rent Controller allowed the application under sec.11(3) and rejected the prayer under sec.11(8). The tenant appealed by filing R.C.A.No.8/2006. The said appeal stands dismissed by the impugned judgment dated 23.3.2007. Hence this revision.

3. The brief facts of the case are the following: The petition schedule room is in a large building with several rooms, which belong to several persons. The landlord got the said room from her mother. She is a doctor by profession. At present she is running a skin clinic in a room owned by her daughter which is adjacent to the petition schedule room. She requires the petition schedule room owned by her also for her use. She has another room in which a pharmacy is housed. The only convenient room for expanding her clinic is the petition schedule room. Of late her practice has increased . The area of the room now housing the clinic will come to only about 330 sq. ft. Owing to lack of space she has taken a room on rent in Warriam Road along with another doctor. So, she has to shuttle from the present clinic to the new room for carrying out certain procedures. If the adjacent room is also available, it will be very convenient to her. Hence the petition.

4. The tenant resisted the application on various grounds. There are two other rooms available with the petitioner. Further, she is residing in a very large

building, a portion of which could be used for housing the clinic. So, the claim for eviction put forward is made without bona fides. The tenant is mainly depending on the income from the business done by him in the petition schedule room. There is no other convenient room in the locality. Therefore, the tenant prayed for dismissal of the application.

5. From the side of the landlord, the petitioner was examined as P.W.1 and the advocate commissioner as P.W.2 and Exts.A1 to A7 were marked. From the side of the respondent, he got himself examined and no document was marked from his side.

6. After hearing both sides, the Rent Controller rejected the application under sec.11(8) and allowed it under sec.11(3). The landlord did not challenge the finding under sec.11(8). After the unsuccessful challenge by the tenant against the finding under sec.11(3) before the Appellate Authority, the present revision is filed.

7. The learned counsel for the petitioner attacked the order under sec.11 (3) mainly relying on the first proviso to sec.11(3). The proviso says that if the landlord has another building in the city, town or village, an order under sec.11(3) shall not be passed. The learned counsel for the petitioner points out that the landlord admitted that she has got two other rooms. But she claimed the adjacent room occupied by the petitioner for the reason that the same can be used as a single room by removing the wall in between. The learned counsel submits that the joining of the rooms is not possible. Therefore, the claim made for the adjacent room is without any bona fides. The Appellate Authority found that the landlord is having sufficient practice in the field of cosmetology in which

she has specialisation. The present room occupied by her is only a room having 330 sq. ft., which is evidently not sufficient for running the clinic now. The Appellate Authority considered whether the tenant is entitled to the benefit of the first proviso. It was found that the rooms stated to be available are not, in fact, available for use. One of the rooms is housing a pharmacy. The other room stated to be vacant does not belong to her. The said room has already been assigned to her daughter Saritha. So, there is no vacant room for her use as contemplated under the first proviso. Since the adjacent room occupied by the petitioner is available, it can be used for expansion of the clinic, even assuming the contention of the learned counsel for the petitioner that they cannot be joined together and converted to be a single room is correct. So, the claim for getting the adjacent room for her possession was rightly held to be a bona fide need.

8. The learned counsel also pointed out that at the trial stage the tenant pointed out that the petitioner was residing in a huge building, a portion of which could be conveniently used to house the clinic. The Rent Control Court did not consider it. But, later during the pendency of the appeal, she vacated the building and shifted her residence to a newly constructed building. So, the entire building is now available. So, the tenant is entitled to get the benefit of the first proviso to sec.11(3), it is submitted. But the Appellate Authority noticed the contention of the landlord that there is no courtyard or parking area for the said building. It is located in a very busy area near the Ernakulam market. Therefore, the clients coming to her clinic will not have any parking space. So, the Appellate Authority held that the said residential building which is lying vacant is not suitable for the

running of the clinic. The Appellate Authority is the final court on facts. What is stated above is a finding of fact. Even assuming that if we were sitting in appeal, we would have taken a different view, even then it may not be a ground to interfere with the finding of the Appellate Authority. We can interfere with it only if we find that the finding is perverse. We find it difficult to condemn the said decision of the Appellate Authority as perverse.

9. Thirdly the learned counsel for the petitioner pointed out that in the upstairs of the building there is a large hall. The said point was also considered by the Appellate Authority. She is a co-owner of the said hall. Her sister-in-law is the other owner. So her sister-in-law's consent is necessary for putting the hall to the use of housing a skin clinic. So the Appellate Authority found that the co-ownership of the hall cannot be said to satisfy the requirement of the first proviso to sec.11(3). We feel that the same is also a plausible view on the facts.

10. The learned counsel for the petitioner also relied on the decision of this court in *Muhammed Basheer v. Mujib Rahman - 2005 (4) KLT 697.* Special reference was made to paragraph 12 dealing with how the question of bona fide need should be considered and decided. The said decision lays down certain general principles under sec.11(3). But, in this case, we are of the view that for the reasons urged by the learned counsel which we have already dealt with, we cannot hold that the bona fide need urged by the landlord is not subsisting. No other points were urged.

11. In the result the Rent Control Revision fails and it is dismissed.

12. The learned counsel for the petitioner prays for some time to vacate the premises. We heard the learned counsel appearing for the respondent-

landlord. Having regard to the fact that the petitioner is running a business, it is ordered that he shall be granted six months' time from today to vacate the premises provided he files an affidavit before the Executing Court unconditionally undertaking to vacate the premises within six months from today and also agreeing to pay the rent due without fail on the due dates. The affidavit in this regard shall be filed within one month from today

K. BALAKRISHNAN NAIR
JUDGE

HARUN-UL-RASHID,
JUDGE.

mt/